

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5686 of 1983

Date of decision: 29-8-96

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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S K SHARMA

Versus

STATE OF GUJARAT  
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Appearance:

MR PV HATHI for Petitioners

Mr. Mukesh Patel for Respondent No. 1  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 29/08/96

ORAL JUDGEMENT

Heard the learned counsel for the parties.

Challenge is made by the petitioner to the order dated 24-10-1983 under which recovery of the amount of special pay paid to the petitioner has been ordered. Learned counsel for the petitioner contended that this

order is passed in violation of the principles of natural justice. The petitioners were not given an opportunity of being heard before the impugned order has been made by the respondents. On the other hand Mr. Patel contended that the petitioners were erroneously given the special pay and it was nothing but only rectification of the error and as such the principles of natural justice need not be complied with.

2. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. I do not consider it proper to go into the question whether by error or mistake the petitioner has been given special pay. I do not also consider it proper in this petition to decide the question of entitlement of the petitioner to get special pay. But it is an admitted position that before passing the order for recovery of the amount of special pay paid to the petitioner none of them have been given notice or opportunity of hearing. The petitioners were getting special pay since 1978 and in the year 1983 it was sought to be recovered. This recovery of the amount of special pay which was paid to the petitioners from 1978 to 1983 certainly results in civil consequences. The petitioners have to repay the amount and as such it is an order which causes prejudice to them. It may be an administrative order. But when it results in civil consequences and causes prejudice to the petitioners it was obligatory on the part of the respondents to follow the basic principles of natural justice. The petitioners should have been given notice and an opportunity of hearing before passing the order for recovery of the amount which adversely affects them. This precisely has not been done in the present case. Only on this ground this writ petition deserves to be accepted.

3. In the result this writ petition succeeds and the same is allowed. The order dated 24-10-1983 at annexure-A is quashed and set aside. It is made clear that quashing and setting aside of the order impugned in this special civil application will not come in the way of the respondents to make fresh order in accordance with law after affording reasonable opportunity of hearing to the petitioners. Rule made absolute in the aforesaid terms. No order as to costs.

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